

December 15, 2004

Mr. David L. Morris II, AICP
Natural Resources Manager, Waterworks
City of Newport News, Department of Public Utilities
700 Town Center Drive
Newport News, Virginia 23606

RE: Federal Consistency Certification Update, Proposed King William
Reservoir Project: Review Status Report
DEQ-04-176F

Dear Mr. Morris:

The Department of Environmental Quality ("DEQ") is responsible for coordinating Virginia's review of federal consistency certifications submitted pursuant to the Coastal Zone Management Act of 1972, as amended (CZMA). Pursuant to the CZMA, all activities located within Virginia's designated coastal management area that require a federal permit, license, or approval must be consistent with the Virginia Coastal Resources Management Program (VCP). The VCP is comprised of a network of policies administered by several agencies. Accordingly, DEQ is coordinating the review of this project with agencies administering the enforceable and advisory policies of the VCP.

As we discussed this morning, I am providing you with an interim status report on our review of the federal consistency certification for the King William Reservoir project. On September 17, 2004, DEQ's Office of Environmental Impact Review received the federal consistency certification update prepared by the City of Newport News, Department of Public Utilities, Waterworks (hereinafter "Newport News") for the proposed King William Reservoir project. Pursuant to the Federal Consistency Regulations implementing the Coastal Zone Management Act (see Title 15, Code of Federal Regulations, Part 930, sub-part D (sections 930.50 through 930.66)), there is a six-month review period allowed to the State for review of federal consistency certifications (section 930.62(a)). If the review is not completed within three months, or December 17, 2004 in this case, the State must notify the applicant of the status of the review and the basis for further delay (section 930.62(b)).

Project Description

According to the federal consistency certification update received on September 17, Newport News proposes to construct an impoundment covering 1,526 acres formed by a new dam on Cohoke Creek, a tributary of the Pamunkey River located between the Pamunkey and Mattaponi Rivers in King William County. Newport News proposes to withdraw a maximum of 75 million gallons of water a day from the Mattaponi River through an intake structure in that River and a pump station at Scotland Landing, 24 river miles upstream from the mouth of the River. This water would be pumped through a 54-inch pipeline 1.5 miles to the proposed reservoir from the River. A maximum of 50 million gallons a day would be pumped out of the proposed reservoir through a pipeline to Beaverdam Creek, a tributary of Diascund Creek Reservoir, in New Kent County. This pipeline would be 11.7 miles long and 42 or 48 inches, depending on location, in diameter. The purpose of the project is to meet future water supply needs of the lower peninsula (Newport News, Williamsburg, York County, and other localities in Newport News's service area) (Consistency Certification Update, Appendix with additional information, pages 1-2, item 1).

Review Procedures

1. Agency Review Participation. The federal consistency certification update submitted in September 2004 has been reviewed by the following agencies and/or offices (starred offices (*) administer Enforceable Policies of the VCP):

Department of Environmental Quality:

Office of Environmental Impact Review*

Piedmont Regional Office*

Division of Air Programs Coordination*

Division of Water Quality*

Department of Game and Inland Fisheries*

Department of Agriculture and Consumer Services

Department of Conservation and Recreation*

Division of Chesapeake Bay Local Assistance*

Division of Soil and Water Conservation*

Division of Natural Heritage

Department of Health*

Marine Resources Commission*

Department of Historic Resources

Virginia Institute of Marine Science (advisor to Marine Resources Commission)

Department of Forestry

Hampton Roads Planning District Commission

King William County.

This selection of agencies and entities reflects those that have commented previously and those that have some legal responsibility for the natural resources or public resources potentially affected by the project.

2. Public Participation.

(a) *Authority.* The Federal Consistency Regulations (15 CFR Part 930, section 930.61) require the State, in conducting its review of a federal consistency certification, to ensure timely public notice of the proposed activity. Public participation, at the discretion of the State, may include one or more public hearings.

(b) *Public Notice.* By September 21, 2004, DEQ had developed a public notice of the review and sent copies to a number of libraries and newspapers on the Peninsula as well as posting a copy on DEQ's agency web site. The public notice explained the project and process and announced a public hearing to be held on the evening of October 20, 2004 in Williamsburg. It also stated that the public comment period would close on October 29, 2004. The libraries to which the public notice was sent are:

Upper King William Library, King William
Hanover Branch Library, Hanover
King and Queen Branch, St. Stephen's Church
West Point Branch, West Point
Newport News Library System (main branch and four others), Newport News.

The newspapers published the public notice as follows:

Richmond Times-Dispatch, September 23, 2004
Newport News Daily Press, September 24, 2004
Tidewater Review, September 29, 2004.

(c) *Public Hearing.* DEQ held a public hearing on the consistency review on the evening of October 20, 2004 in the Community Building, 401 North Boundary Street in Williamsburg. Approximately 160 people attended the hearing; there were 24 speakers represented in the transcript, many of whom represented organizations. The following organizations found the project to be consistent with the VCP: Virginia Peninsula Chamber of Commerce, Williamsburg Chamber of Commerce, and Peninsula Citizens for Fair Play on Water. The following organizations found the project to be inconsistent with the VCP: Mattaponi Indian Tribe, Chesapeake Bay Foundation, Sierra Club, Virginia Forest Watch, Georgetown University Law Center, Mattaponi and Pamunkey Rivers Association, Wetlands Watch, Alliance to Save the Mattaponi, and 11 Watermen's Associations. Six of the 24 speakers found the project to be consistent with the VCP while 18 found the project to be inconsistent. In addition, 9 people who registered to

speak, but were unable to do so because of time constraints, found the project to be inconsistent with the VCP. A copy of the transcript generated by Crane-Snead & Associates, Inc. is attached.

(d) *Written Comments.* DEQ received additional written comments and statements from many of these speakers and organizations during the hearing or in the remaining days of the public comment period. There were 2 pieces of correspondence and 1,120 pre-printed postcards from the Peninsula citizens for “Fair Play on Water” supporting the project. The writers of 137 letters and at least 1723 form letters and post cards expressed the opinion that the project would not be consistent with the VCP.

Summary of Public Comments Analysis

Due to the volume of information provided by the public and the need for a careful analysis thereof, in order to facilitate a timely review by agencies, DEQ summarized the major comments which represented the views of numerous individuals and several organizations. In summary, most of the public comments received state that the project currently under review is inconsistent with the following enforceable policies of the VCP: Fisheries Management; Subaqueous Lands Management; Wetlands Management; Non-point Source Pollution Control; and Coastal Lands Management. In addition, the public comments relate to the following Advisory Policies relative to Coastal Natural Resources Areas: wetlands; aquatic spawning, nursery, and feeding grounds; significant wildlife habitat areas; and underwater historic sites. According to public comments, the VWP permit issued in 1997 is invalid in the absence of a final mitigation plan which must be approved by DEQ. Also, according to public comments, since the applicant has failed to meet the deadlines established in the VWP permit conditions to submit the final wetlands mitigation plan, an ecological monitoring plan, and a multi-dimensional salinity monitoring plan, the applicant has violated the 1997 - VWP permit.

Public comments further assert that the project as proposed to the Marine Resources Commission for consideration in its August 2004 permitting decision differs in important particulars from the project as permitted by the State Water Control Board in December 1997 (Virginia Water Protection permit), or by in the Board’s December 2002 VWP permit modification. Moreover, the Marine Resources Commission’s August 2004 permit may include requirements that are incompatible with the design and use of the proposed project as contemplated by the VWP permit modification.

Based on public comments pertaining to possible changes in design and in coastal impacts, DEQ determined that the public comments required further review by the agencies administering Virginia’s coastal policies. Accordingly, in a December 2, 2004 memorandum, DEQ requested that reviewing agencies undertake an analysis of public

comments on this matter. To date, 3 of the 13 reviewers have responded to our request for comments on the public comments. As requested, I am forwarding a copy of the December 2 memorandum to agencies administering the enforceable and advisory policies of the VCP and copies of the public comments which accompanied the memorandum.

Status of Review

At this time, because agencies administering the enforceable policies of the VCP are still reviewing the public comments, DEQ is unable to complete its review or provide final comments on this project. However, we anticipate receiving final comments from these agencies shortly. Barring unforeseen circumstances, DEQ expects to complete the review of the federal consistency certification at the earliest practicable time and in advance of the legally mandated deadline of March 17, 2005 stipulated at 15 CFR § 930.62(a).

Thank you for your patience. If you have questions, please feel free to call me (telephone (804) 698-4325) or Charles Ellis of this Office (telephone (804) 698-4488).

Sincerely,

Ellie L. Irons
Program Manager
Office of Environmental Impact Review

Enclosures

cc: Eldon Hout, NOAA-OCRM
James W. Haggerty, ACOE-NAD
Col. Yvonne Prettyman-Beck, ACOE-Norfolk District
Andrew K. Zadnik, DGIF
John R. Davy, DCR
Alan D. Weber, VDH
Ellen Gilinsky, DEQ-Water
Mark S. Alling, DEQ-PRO
Tony Watkinson, MRC
Catherine M. Harold, DEQ-Water
Alice R. T. Baird, DCR-DCBLA
Frank Pleva, King William County
Ethel R. Eaton, DHR
Thomas A. Barnard, Jr., VIMS
J. Michael Foreman, DOF
Keith R. Tignor, VDACS